IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3936 of 1997
with
SPECIAL CIVIL APPLICATION NO. 3937 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RUPNAGAR CO OPERATIVE HOUSING SOCIETY LTD

Versus

DAHYABHAI DOSALBHAI PATEL

Appearance:
MR TUSHAR MEHTA for Petitioners
in both petitions

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 29/07/97

ORAL JUDGEMENT

The petitioner who has filed these two petitions challenges the orders of the Tribunal by which the Revision Applications which were filed by the petitioner were dismissed and the orders made by the learned Board of Nominee allowing the amendments in the petition were up-held.

2. The respondents had filed Lavad Suit No. 274/85 and Lavad Suit No. 176/85 before the Registrar and Board of Nominees at Ahmedabad. In fact, these Suits which were re-numbered, were filed in the year 1980 i.e. on 30.4.1980 and their old numbers were Lavad Suit No. 1033/80 and 1032/80.

In these suits, these respondents - original disputants, gave the applications Exhibits 41 and 51 for amendment of the petition. The Board of Nominees allowed these amendments against which the petitioner preferred Revision Applications under Section 150 (9) of the Gujarat Co-operative Societies Act, 1961.

3. It was contended before the Tribunal that the amendments changed the very nature of the suits. The amendment was sought in the relief clauses of the plaint and additional prayers were sought seeking a declaration that the order passed by the Society even if taken to be an order under bye-law 16(2), was void and illegal as the bye-law did not provide for expulsion of the member, but only for his suspension until compliance of any of the breaches committed by such member. A further relief was also sought to the effect that the entrance of defendant No.2 as a member and the allotment of the plot in question to him was illegal.

The Tribunal, after careful consideration of all the contentions raised, held that subject to the question of limitation and the question whether the dispute was within the purview of Section 96 of the Act, which could be raised later on during the proceedings, the discretion to allow the amendment was properly exercised by the Board of Nominees. It was held that the Society was not likely to be prejudiced by the amendment and that it was open for the Board of Nominees to proceed with the matter which was an old matter of the year 1980.

4. The only contention which was raised on behalf of the petitioner by their learned Counsel is that the Board of Nominee had no authority to allow amendment because all the provisions of the Code of Civil Procedure were not made applicable by Sec. 99(1) of the Act. It was submitted that though this contention that the provisions of the Civil Procedure Code relating to amendment of pleadings were not applicable was not raised, since it was a pure question of law, the petitioners should be allowed to raise the same. It was made clear that the impugned orders of the Tribunal were not being challenged on any other ground.

5. The disputes under Section 96 of the said Act are referred in the prescribed form to the Registrar or his Nominee as provided in Section 96(1) read with Rule 42 and Form"F". Under Rule 42, a dispute under Section 96 is to be referred in writing in form "F" with suitable modification as may be necessary. In Form "F" the particulars of the claim and the facts constituting the cause of action and the time when it arose are to be mentioned. The prayer of the disputant is to be set out. Thus, the facts of the case and the reliefs claimed are to be set out as per form "F" just as it is required to be done in case of a plaint. The purpose of providing this procedure of putting the facts, cause of action and relief on record is to see that the disputant is in a position to bring facts which according to him are correct on record and seeks the reliefs which according to him should be given in context of the dispute which is raised. Therefore, if there is any error in filling the form, that error can obviously be corrected by the disputant with the permission of the Nominee. To negate this would lead to an absurd situation because even obvious mistakes cannot be corrected. Denial of the power to the Registrar or the Board of Nominees to allow the disputant to correctly put up the facts in Form "F" or to seek a relief which he is entitled, would defeat the very purpose underlying the adjudicatory process. It is not necessary to resort to the inherent powers under the Code of Civil procedure in this context. An authority which is empowered to adjudicate on the basis of the facts which are required to be stated in a formalised manner would obviously allow any error that may have crept in, to be corrected by the disputant in filling up the form or would even allow a relief to be claimed, which according to the disputant he is entitled to in context of the dispute raised.

6. Further more, this power of the Board of Nominee to allow amendment in the plaint has an important bearing on the other powers which he has to exercise and in respect of which the provisions of Civil procedure Code are specifically made applicable. Under Section 99(1), the Registrar or his nominee or Board of Nominees hearing a dispute under Section 98 is required to hear the dispute in the manner prescribed and is given power to enforce attendance of witnesses including parties interested or any of them and to compel them to give evidence and to compel production of documents by the same means and as far as possible in the same manner as provided in the Code of Civil Procedure. Under clause

(c) of sub-section (3) of Section 99, the Registrar is empowered to strike out the name of an improperly joined party or to join any party for the purpose of effectually and completely adjudicating upon and settling of the questions involved in the dispute. It is important to note in the context of the present petitions that in clause (d) of sub-section (3) of Section 99, the Registrar or his nominee or Board of Nominees can grant leave to a party to the dispute to claim an additional relief. It is provided therein that any person who is a party to the dispute and entitled to more than one relief in respect of the same cause of action may claim all or any of such reliefs; but if he omits to claim all such reliefs, he shall not forward claim for any relief so omitted, except with the leave of the Registrar, his nominee or Board of Nominees. Therefore, the Registrar has a discretion to allow the parties to claim additional reliefs in respect of the same cause of action. When there is power to allow claiming of additional reliefs, that would imply power to add factual data in support of such additional reliefs subject to the requirement that all these should be in support of the same cause of action. Therefore, it is implied in the provisions of clause (b) of Sub-section (3) of Section 99 that the Registrar has power to allow amendment in the plaint by giving leave to add the relief which was not earlier claimed. In the amendment applications which are the subject matter of these petitions, as noted above, additional reliefs were claimed and the Board of Nominees granted leave to claim such additional reliefs, which it was empowered to do under Section 99 (3) (d) of the said Act.

7. In context of the provisions of Section 99 (3) (c) of the said Act, a question had arisen as to the grant of the amendment in the pleading in General Co-operative Bank Ltd. Vs. SRM Industries & ors, reported in 1992 (2) G.L.H 459. My esteemed brother Hon'ble Mr.Justice S.D.Shah, in his erudite judgement, referring to the provisions of Order 1 and 6 of Rule 17 of the Civil procedure Code, held that it is not open to the Court deciding an application for amendment to investigate the tenability or otherwise of the case, which is sought to be made out by proposed amendment, without even allowing the amendment. It was held that when deciding an application for amendment, the Court is not supposed to go into the merits and demerits of the amendment and express any opinion one way or the other. In context of the matter before my esteemed brother, it was held that where amendment of pleading is sought in order to implead new parties to the suit to whom

reference was already made in the plaint and liberty was reserved by the plaintiff to implead them at the appropriate stage, the Court cannot consider whether persons sought to be impleaded were liable for the suit claim and it cannot proceed to decide as to whether they were already discharged from liability.

Thus, at the stage of considering an application for amendment, it is not the function of the Court to go into the question of merits/demerits of the amendment and to reject the application for amendment on the ground that the amendment sought was liable to be rejected on merits. I am in respectful agreement with the opinion expressed by my esteemed brother Hon'ble Mr.Justice S.D.Shah.

In the present case, the Tribunal has rightly held that there was no prejudice likely to be caused by allowing of these amendments and that the nature of the proceedings did not change.

Apart from all this, the proceedings are pending since the year 1980 and therefore, this is not a fit case where the discretionary remedy under Article 226 of the Constitution should be exercised in the petitioners' favour so as to cause further delay in the proceedings which are pending over a decade and a half.

Under the above circumstances, both these petitions are rejected.

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